

108TH CONGRESS
2D SESSION

S. 2983

To establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVIII of the Social Security Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2004

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish hospice demonstration projects and a hospice grant program for beneficiaries under the medicare program under title XVIII of the Social Security Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Hospice
5 Demonstration Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Each year more than $\frac{1}{3}$ of the people who
2 die suffer from a chronic illness.

3 (2) Approximately $\frac{1}{3}$ of Americans are unsure
4 about whom to contact to get the best care during
5 life's last stages.

6 (3) Americans want a team of professionals to
7 care for the patient at the end of life.

8 (4) Americans want emotional and spiritual
9 support for the patient and family.

10 (5) Ninety percent of Americans do not realize
11 that hospice care is a benefit provided under the
12 medicare program under title XVIII of the Social
13 Security Act.

14 (6) Data of the Centers for Medicare & Med-
15 icaid Services show that beneficiaries were enrolled
16 in hospice for an average of less than 7 weeks in
17 1998, far less than the full 6-month benefit under
18 the medicare program.

19 (7) According to the most recent data available,
20 although more medicare beneficiaries are enrolled in
21 hospice, the medicare length of stay has declined.

22 (8) Use of hospice among medicare beneficiaries
23 has been decreasing, from a high of 59 days in 1995
24 to less than 48 days in 1998.

1 **SEC. 3. HOSPICE DEMONSTRATION PROJECTS AND HOS-**
2 **PICE EDUCATION GRANTS.**

3 (a) DEFINITIONS.—In this section:

4 (1) DEMONSTRATION PROJECT.—The term
5 “demonstration project” means a demonstration
6 project established by the Secretary under sub-
7 section (b)(1).

8 (2) HOSPICE CARE.—The term “hospice care”
9 means the items and services described in subpara-
10 graphs (A) through (I) of section 1861(dd)(1) of the
11 Social Security Act (42 U.S.C. 1395x(dd)(1)) that
12 are provided to a seriously ill medicare beneficiary
13 under a demonstration project by a hospice program
14 (or by others under an arrangement with such a
15 program) under a written plan for providing such
16 care to such beneficiary established and periodically
17 reviewed by the beneficiary’s attending physician, by
18 the medical director of the program, and by the
19 interdisciplinary group described in section
20 1861(dd)(2)(B) of such Act (42 U.S.C.
21 1395x(dd)(2)(B)).

22 (3) HOSPICE PROGRAM.—The term “hospice
23 program” has the meaning given that term in sec-
24 tion 1861(dd)(2) of the Social Security Act (42
25 U.S.C. 1395x(dd)(2)).

1 (4) MEDICARE BENEFICIARY.—The term
 2 “medicare beneficiary” means any individual who is
 3 entitled to benefits under part A or enrolled under
 4 part B of the medicare program.

5 (5) MEDICARE PROGRAM.—The term “medicare
 6 program” means the health benefits program under
 7 title XVIII of the Social Security Act (42 U.S.C.
 8 1395 et seq.).

9 (6) SECRETARY.—The term “Secretary” means
 10 the Secretary of Health and Human Services.

11 (7) SERIOUSLY ILL.—The term “seriously ill”
 12 has the meaning given such term by the Secretary
 13 (in consultation with hospice programs and academic
 14 experts in end-of-life care), except that the Secretary
 15 may not limit such term to individuals who are ter-
 16 minally ill (as defined in section 1861(dd)(3) of the
 17 Social Security Act (42 U.S.C. 1395x(dd)(3))).

18 (b) HOSPICE DEMONSTRATION PROJECTS.—

19 (1) ESTABLISHMENT.—The Secretary shall es-
 20 tablish demonstration projects in accordance with
 21 the provisions of this subsection to increase the util-
 22 ity of the hospice care for seriously ill medicare
 23 beneficiaries.

24 (2) PARTICIPATION.—

1 (A) HOSPICE PROGRAMS.—Except as pro-
2 vided in paragraph (4)(A), only a hospice pro-
3 gram with an agreement under section 1866 of
4 the Social Security Act (42 U.S.C. 1395cc), a
5 consortium of such hospice programs, or a
6 State hospice association may participate in the
7 demonstration program.

8 (B) SERIOUSLY ILL MEDICARE BENE-
9 FICIARIES.—The Secretary shall permit any se-
10 riously ill medicare beneficiary residing in the
11 service area of a hospice program participating
12 in a demonstration project to participate in
13 such project on a voluntary basis.

14 (3) SERVICES UNDER DEMONSTRATION
15 PROJECTS.—The provisions of section 1814(i) of the
16 Social Security Act (42 U.S.C. 1395f(i)) shall apply
17 to the payment for hospice care provided under the
18 demonstration projects, except that—

19 (A) notwithstanding section 1862(a)(1)(C)
20 of such Act (42 U.S.C. 1395y(a)(1)(C)), the
21 Secretary shall provide for reimbursement for
22 items and services provided under the sup-
23 portive and comfort care benefit established
24 under paragraph (3);

1 (B) any licensed nurse practitioner or phy-
2 sician assistant may admit a seriously ill medi-
3 care beneficiary as the primary care provider
4 when necessary and within the scope of practice
5 of such practitioner or assistant under State
6 law;

7 (C) if an underserved community included
8 in a demonstration project does not have a
9 qualified social worker, any professional (other
10 than a social worker) who has the necessary
11 knowledge, skills, and ability to provide medical
12 social services may provide such services;

13 (D) the Secretary shall waive any require-
14 ment that nursing facilities used for respite
15 care have skilled nurses on the premises 24
16 hours per day;

17 (E) the Secretary shall permit respite care
18 to be provided to the seriously ill medicare ben-
19 eficiary at home; and

20 (F) the Secretary shall waive reimburse-
21 ment regulations to provide—

22 (i) reimbursement for consultations
23 and preadmission informational visits, even
24 if the seriously ill medicare beneficiary
25 does not elect hospice care at that time;

1 (ii) except with respect to the sup-
2 portive and comfort care benefit under
3 paragraph (3), a minimum payment for
4 hospice care provided under the dem-
5 onstration projects based on the provision
6 of hospice care to a seriously ill medicare
7 beneficiary for a period of 14 days, that—

8 (I) the Secretary shall pay to any
9 hospice program participating in a
10 demonstration project and providing
11 such care (regardless of the length of
12 stay of the seriously ill medicare bene-
13 ficiary); and

14 (II) may not be less than the
15 amount of payment that would have
16 been made for hospice care if payment
17 had been made at the daily rate of
18 payment for such care under section
19 1814(i) of the Social Security Act (42
20 U.S.C. 1395f(i));

21 (iii) an increase in the reimbursement
22 rates for hospice care to offset—

23 (I) changes in hospice care and
24 oversight under the demonstration
25 projects;

1 (II) the higher costs of providing
 2 hospice care in rural areas due to lack
 3 of economies of scale or large geo-
 4 graphic areas; and

5 (III) the higher costs of pro-
 6 viding hospice care in urban under-
 7 served areas due to unique costs spe-
 8 cifically associated with people living
 9 in those areas, including providing se-
 10 curity;

11 (iv) direct payment of any nurse prac-
 12 titioner or physician assistant practicing
 13 within the scope of State law in relation to
 14 hospice care provided by such practitioner
 15 or assistant; and

16 (v) a per diem rate of payment for in-
 17 home care under subparagraph (E) that
 18 reflects the range of care needs of the seri-
 19 ously ill medicare beneficiary and that—

20 (I) in the case of a seriously ill
 21 medicare beneficiary that needs rou-
 22 tine care, is not less than 150 percent,
 23 and not more than 200 percent, of the
 24 routine home care rate for hospice
 25 care; and

1 (II) in the case of a seriously ill
2 medicare beneficiary that needs acute
3 care, is equal to the continuous home
4 care day rate for hospice care.

5 (4) SUPPORTIVE AND COMFORT CARE BEN-
6 EFIT.—

7 (A) IN GENERAL.—For purposes of the
8 demonstration projects, the Secretary shall es-
9 tablish a supportive and comfort care benefit
10 for any eligible seriously ill medicare beneficiary
11 (as defined in subparagraph (C)).

12 (B) PARTICIPATION.—Any individual or
13 entity with an agreement under section 1866 of
14 the Social Security Act (42 U.S.C. 1395cc) may
15 furnish items or services covered under the sup-
16 portive and comfort care benefit.

17 (C) BENEFIT.—Under the supportive and
18 comfort care benefit, any eligible seriously ill
19 medicare beneficiary may—

20 (i) continue to receive benefits for dis-
21 ease and symptom modifying treatment
22 under the medicare program (and the Sec-
23 retary may not require or prohibit any spe-
24 cific treatment or decision);

(ii) receive case management and hospice care through a hospice program participating in a demonstration project (for which payment shall be made under paragraph (2)(F)(ii)); and

(iii) receive information and education in order to better understand the utility of hospice care.

(D) PAYMENT.—The Secretary shall establish procedures under which the Secretary pays for items and services furnished to seriously ill medicare beneficiaries under the supportive and comfort care benefit on a fee-for-service basis.

(E) ELIGIBLE SERIOUSLY ILL MEDICARE BENEFICIARY DEFINED.—

(i) IN GENERAL.—In this paragraph, the term “eligible seriously ill medicare beneficiary” means any seriously ill medicare beneficiary that meets the criteria approved by the Secretary under clause (ii).

(ii) APPROVAL OF CRITERIA.—

(I) IN GENERAL.—With respect to each demonstration project, the Secretary shall approve criteria for determining whether a seriously ill

1 medicare beneficiary is eligible for
2 hospice care under a demonstration
3 project that has been developed by
4 hospice programs in consultation with
5 researchers in end-of-life care and the
6 broader medical community.

7 (II) DATA COMPARABILITY.—The
8 Secretary may only approve criteria
9 that ensures that each demonstration
10 project yields comparable data with
11 respect to eligible seriously ill medi-
12 care beneficiaries on—

13 (aa) the utilization of serv-
14 ices by such beneficiaries;

15 (bb) the cost of providing
16 services to such beneficiaries, in-
17 cluding any costs associated with
18 providing services before an indi-
19 vidual is terminally ill (as defined
20 in section 1861(dd)(3)(A) of the
21 Social Security Act (42 U.S.C.
22 1395x(dd)(3)(A))); and

23 (cc) the effect of the dem-
24 onstration project on the quality
25 of care of such beneficiaries.

1 (III) LIMITATION.—The Sec-
 2 retary may not approve criteria if the
 3 purpose of such criteria is to segment
 4 services or to provide a benefit for the
 5 chronically ill.

6 (5) CONDUCT OF DEMONSTRATION
 7 PROJECTS.—

8 (A) SITES.—The Secretary shall conduct
 9 demonstration projects in at least 3, but not
 10 more than 6, sites (which may be statewide).

11 (B) SELECTION OF SITES.—

12 (i) IN GENERAL.—Except as provided
 13 in clause (ii), the Secretary shall select
 14 demonstration sites on the basis of pro-
 15 posals submitted under subparagraph (C)
 16 that are located in geographic areas that—

17 (I) include both urban and rural
 18 hospice programs; and

19 (II) are geographically diverse
 20 and readily accessible to a significant
 21 number of seriously ill medicare bene-
 22 ficiaries.

23 (ii) EXCEPTIONS.—

24 (I) UNDERSERVED URBAN
 25 AREAS.—If a geographic area does

1 not have any rural hospice program
2 available to participate in a dem-
3 onstration project, such area may sub-
4 stitute an underserved urban area,
5 but the Secretary shall give priority to
6 those proposals that include a rural
7 hospice program.

8 (II) SPECIFIC SITE.—The Sec-
9 retary shall select as a demonstration
10 site the State in which (according to
11 the Hospital Referral Region of Resi-
12 dence, 1994–1995, as listed in the
13 Dartmouth Atlas of Health Care
14 1998) the largest metropolitan area of
15 the State had the lowest percentage of
16 medicare beneficiary deaths in a hos-
17 pital when compared to the largest
18 metropolitan area of each other State,
19 and the percentage of enrollees who
20 experienced intensive care during the
21 last 6 months of life was 21.5 percent.

22 (C) PROPOSALS.—

23 (i) IN GENERAL.—The Secretary shall
24 accept proposals by any State hospice asso-
25 ciation, hospice program, or consortium of

1 hospice programs at such time, in such
2 manner, and in such form as the Secretary
3 may reasonably require.

4 (ii) RESEARCH DESIGNS.—The Sec-
5 retary shall permit research designs that
6 use time series, sequential implementation
7 of the intervention, randomization by wait
8 list, and other designs that allow the
9 strongest possible implementation of the
10 demonstration projects, while still allowing
11 strong evaluation about the merits of the
12 demonstration projects.

13 (D) FACILITATION OF EVALUATION.—The
14 Secretary shall design the program to facilitate
15 the evaluation conducted under paragraph (7).

16 (6) DURATION.—The Secretary shall complete
17 the demonstration projects within a period of 6½
18 years that includes a period of 18 months during
19 which the Secretary shall complete the evaluation
20 under paragraph (7).

21 (7) EVALUATION.—During the 18-month period
22 following the first 5 years of the demonstration
23 projects, the Secretary shall complete an evaluation
24 of the demonstration projects in order to deter-
25 mine—

1 (A) the short-term and long-term costs and
2 benefits of changing hospice care provided
3 under the medicare program to include the
4 items, services, and reimbursement options pro-
5 vided under the demonstration projects;

6 (B) whether any increase in payments for
7 the hospice care provided under the medicare
8 program are offset by savings in other parts of
9 the medicare program;

10 (C) the projected cost of implementing the
11 demonstration projects on a national basis; and

12 (D) in consultation with hospice organiza-
13 tions and hospice programs (including organiza-
14 tions and providers that represent rural areas),
15 whether a payment system based on diagnosis-
16 related groups is useful for administering the
17 hospice care provided under the medicare pro-
18 gram.

19 (8) REPORTS TO CONGRESS.—

20 (A) PRELIMINARY REPORT.—Not later
21 than 3 years after the date of enactment of this
22 Act, the Secretary shall submit to the Com-
23 mittee on Ways and Means of the House of
24 Representatives and to the Committee on Fi-

1 nance of the Senate a preliminary report on the
2 progress made in the demonstration projects.

3 (B) INTERIM REPORT.—Not later than 30
4 months after the implementation of the dem-
5 onstration projects, the Secretary, in consulta-
6 tion with participants in the projects, shall sub-
7 mit to the committees described in subpara-
8 graph (A) an interim report on the demonstra-
9 tion projects.

10 (C) FINAL REPORT.—Not later than the
11 date on which the demonstration projects end,
12 the Secretary shall submit a final report to the
13 committees described in subparagraph (A) on
14 the demonstration projects that includes the re-
15 sults of the evaluation conducted under para-
16 graph (7) and recommendations for appropriate
17 legislative changes.

18 (9) WAIVER OF MEDICARE REQUIREMENTS.—
19 The Secretary shall waive compliance with such re-
20 quirements of the medicare program to the extent
21 and for the period the Secretary finds necessary to
22 conduct the demonstration projects.

23 (10) SPECIAL RULES FOR PAYMENT OF
24 MEDICARE+CHOICE ORGANIZATIONS.—The Sec-
25 retary shall establish procedures under which the

1 Secretary provides for an appropriate adjustment in
2 the monthly payments made under section 1853 of
3 the Social Security Act (42 U.S.C. 1395w-23) to
4 any Medicare+Choice organization offering a
5 Medicare+Choice plan to reflect the participation of
6 each seriously ill medicare beneficiary enrolled in
7 such plan in a demonstration project.

8 (c) HOSPICE EDUCATION GRANT PROGRAM.—

9 (1) IN GENERAL.—The Secretary shall establish
10 a Hospice Education Grant program under which
11 the Secretary awards education grants to entities
12 participating in the demonstration projects for the
13 purpose of providing information about—

14 (A) the hospice care under the medicare
15 program; and

16 (B) the benefits available to medicare
17 beneficiaries under the demonstration projects.

18 (2) USE OF FUNDS.—Grants awarded under
19 paragraph (1) shall be used—

20 (A) to provide—

21 (i) individual or group education to
22 medicare beneficiaries and the families of
23 such beneficiaries; and

1 (ii) individual or group education of
 2 the medical and mental health community
 3 caring for medicare beneficiaries; and

4 (B) to test strategies to improve the gen-
 5 eral public knowledge about hospice care under
 6 the medicare program and the benefits available
 7 to medicare beneficiaries under the demonstra-
 8 tion projects.

9 (d) FUNDING.—

10 (1) HOSPICE DEMONSTRATION PROJECTS.—

11 (A) IN GENERAL.—Except as provided in
 12 subparagraph (B), the Secretary shall provide
 13 for the transfer from the Federal Hospital In-
 14 surance Trust Fund under section 1817 of the
 15 Social Security Act (42 U.S.C. 1395i) such
 16 sums as may be necessary to carry out this sec-
 17 tion.

18 (B) SUPPORTIVE AND COMFORT CARE
 19 BENEFIT.—The Secretary shall provide for the
 20 transfer from the Federal Hospital Insurance
 21 Trust Fund under section 1817 of the Social
 22 Security Act (42 U.S.C. 1395i) and the Federal
 23 Supplementary Medical Insurance Trust Fund
 24 established under section 1841 of such Act (42
 25 U.S.C. 1395t), in such proportion as the Sec-

1 retary determines is appropriate, such sums as
2 may be necessary to provide for payment of the
3 costs attributable to the supportive and comfort
4 care benefit.

5 (2) HOSPICE EDUCATION GRANTS.—The Sec-
6 retary shall expend such sums as may be necessary
7 for the purposes of carrying out the Hospice Edu-
8 cation Grant program established under subsection
9 (c)(1) from the Research and Demonstration Budget
10 of the Centers for Medicare & Medicaid Services.

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